TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 176.

EDWARD B. WESLEY, APPELLANT,

vs.

HOWARD P. ELLIS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

FILED DECEMBER 27, 1899.

(17,237.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 27, 1899.

1 UNITED STATES OF AMERICA, *Northern District of Ohio, Eastern Division,* } ss:

Record of the proceedings of the circuit court of the United States within and for the eastern division of the northern district of Ohio, in the cause and matter hereinafter stated, the same being disposed of at a regular term of said court begun and held at the city of Cleveland, in said district, on the first Tuesday in October, being the 4th day of said month, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States of America the 123rd, to wit, on the 14th day of November, A. D. 1898.

Present: The Honorable Augustus J. Ricks, United States district judge.

EDWARD B. WESLEY, Complainant, *vs.* HOWARD P. EELLS, Defendant. } Chancery. No. 5734.

Said action was commenced on the 19th day of January, A. D. 1898, and proceeded to final disposition at the term and day above written, and during the progress thereof pleadings and papers were filed and orders of the court were made and entered in the order and on the dates hereinafter stated, to wit:

2 *Bill of Complaint.*

The United States Circuit Court in and for the Eastern Division of the Northern District of Ohio.

EDWARD B. WESLEY, a Citizen of the State of New York, Plaintiff, *against* HOWARD P. EELLS, a Citizen of the Eastern Division of the Northern District of Ohio, Defendant. } In Equity.

To the honorable the judges of the circuit court of the United States in and for the eastern division of the northern district of Ohio:

Edward B. Wesley, of Port Chester, New York, a citizen of the State of New York, brings this his bill against Howard P. Eells, of the city of Cleveland, county of Cuyahoga, eastern division of the northern district of the State of Ohio, and a citizen of the State of Ohio and an inhabitant of said district.

And thereupon your orator complains and says:

1. That the plaintiff is and at the times hereinafter named was a citizen of the State of New York, and that the defendant is and at the times hereinafter mentioned was a citizen of the State of Ohio — a resident of the eastern division of the northern district of Ohio.

2. That on and prior to the sixteenth day of February, 1892, the State of South Carolina was the owner in fee-simple of the following-

described premises situate in the city of Columbia, county of
3 Richland, and State of South Carolina, to wit: "All that lot, piece, or parcel of land, situate in the city of Columbia and containing one-quarter of an acre, more or less, with the buildings and improvements thereon, known as 'Agricultural Hall' (formerly known as 'Parker's Hall'), bounded on the north by land now or late of the estate of McAndrew, on the east by Richardson street, and on the south and west by lands now or formerly of Jacob C. Lyons, said lot of land being the same lot of land conveyed to Thomas B. Johnston by Jesse E. Dent, sheriff of Richland county, by deed dated the 3rd day of May, A. D. 1875, and recorded in Book 'K' of Deeds, pp. 106 and 107; also all that certain parcel or lot of land situate, lying, and being in the city of Columbia and State aforesaid, containing about one-eighth of an acre of land, bounded north by the Agricultural Hall building and lot immediately in rear thereof, east by Richardson street, south by lot now or formerly of Jacob C. Lyons, and west by lot of Maurice S. Parker, or rather by lot formerly of Maurice S. Parker, said lot being a rectangular parallelogram in shape, and measuring on Richardson street from the southeastern corner of the said Parker Block building south twenty-six feet and from east to west two hundred and eight feet, the said lot also adjoining a part of the Agricultural Hall block and being the same lot of land formerly conveyed to Thomas B. Johnston by Asher Palmer, of Columbia, in said State, by deed dated December 11th, 1875, and recorded in R. M. conveyance office for Richland county, in Book 'K' of Deeds, pp. 319 and 320, the above-described two lots of land being the same conveyed to the State of South Carolina by deed of T. B. Johnston, dated April 9th, 1883, and recorded in R. M. conveyance office, in Book 'P' of Deeds, &c., p. 87."

4 3. That, being so seized in fee of the said premises, the said State of South Carolina, by an act of the General Assembly of said State duly passed and approved, caused the said premises to be sold at public auction, in the manner prescribed by said act, on the second day of February, 1892, and at said sale the plaintiff, by his attorney, bid off the said premises at and for the price of sixteen thousand one hundred and sixty-five dollars, he being at that price the highest and last bidder therefor.

4. That by the terms of said sale the purchaser was required to pay in cash one-third of the purchase price of said premises and to execute his bond and mortgage of the premises to secure the payment of the balance of said purchase price in two equal annual instalments, with interest from the date of said purchase, the obligor to have the option of paying up the whole or any part of the sum so to be secured by said bond at any time before the maturity thereof.

5. That this plaintiff having become the purchaser of said property aforesaid, for his convenience caused the deed therefor to be made to one J. W. Alexander, of the State of North Carolina, who consented to act as trustee for this plaintiff for the purchase of said premises, and the deed therefor was duly executed and delivered by the commissioners of the sinking fund of the State of South

Carolina to said J. W. Alexander in fee-simple, without any declaration of trust on the face thereof; and thereupon the said J. W. Alexander duly executed and delivered to the treasurer of the State of South Carolina his bond, in the penal sum of twenty-one thousand five hundred and fifty-three and $\frac{34}{100}$ dollars, conditioned
5 for the payment of the full and just sum of ten thousand seven hundred and seventy-six and $\frac{67}{100}$ dollars in two equal annual instalments from the date of said bond, with interest thereon, payable annually, with the proviso that the said J. W. Alexander, obligor, should have the privilege of forestalling the said bond by paying the whole or any part of the amount secured thereby at any time before the maturity thereof, the said bond and mortgage and the deed of convevance to the said J. W. Alexander being dated the second day of February, 1892, the day of the sale of said premises at public auction, as aforesaid.

5. That this plaintiff, on said sixteenth day of February, 1892, being the owner and holder of a large amount of revenue bond scrip duly issued by the State of South Carolina, "being valid obligations of the State of South Carolina," as hereinafter more particularly alleged, which was receivable at par by the said State for taxes and all other dues to the State of South Carolina, furnished to said J. W. Alexander a sufficient amount thereof for the purpose hereinafter indicated, and the said J. W. Alexander, by his attorneys therein, and then and there exercising the privilege reserved to himself by the terms and conditions of said bond to pay up the whole of the amount secured thereby, duly tendered to the Honorable W. T. C. Bates, State treasurer of the State of South Carolina, the full amount then due thereon, including interest from the second day of February, 1892, up to and including the sixteenth day of February, 1892, the day of said tender, the said W. T. C. Bates, as State treasurer, then and there having the custody and possession of the said bond and mortgage, and being the proper officer designated by law
6 for the receipt of the amount secured by said bond and mortgage, and being the obligee named therein; which tender, however, was refused by the said W. T. C. Bates, State treasurer as aforesaid.

6. That by the laws of the State of South Carolina a tender in full of the amount of money due to a mortgagee secured by a mortgage of real or personal property at any time when the mortgagor has a right to pay the same operates as a satisfaction and extinguishment of the lien of the mortgage securing the payment of such money, whether the amount so tendered be accepted or not and whether the mortgagor shall keep himself in position to make good the tender or not.

7. That thereafter the said W. T. C. Bates, treasurer of the State of South Carolina, as aforesaid, in violation of the rights of this plaintiff and of the said J. W. Alexander, in whose name the title to said property then stood, caused the said mortgage to be filed for record in the office of the register of mesne conveyances for Richland county, the office where the said mortgage should have been recorded if a valid and subsisting mortgage, and the same was then

and there entered upon the books of registry of said office; but this plaintiff charges "that the said mortgage having been extinguished by the tender of the amount due thereon, there was no authority of law for the recording of the same."

8. That thereafter the said J. W. Alexander, at the request of this plaintiff, duly conveyed the said premises to this plaintiff in fee-simple by deed duly executed and thereafter recorded, dated the 11th day of February, 1893.

9. That the revenue bond scrip so held by this plaintiff, as aforesaid, was duly issued by the State of South Carolina to this plaintiff in the manner following, to wit:

7 By an act of the General Assembly of the State of South Carolina approved the 15th day of September, 1868, entitled "An act to authorize additional aid to the Blue Ridge Railroad Company in South Carolina," the State of South Carolina, by a guaranty endorsed thereon, pledged its faith and credit to the payment of the principal and interest of certain bonds to be issued by the said railroad company to the amount of four million dollars ($4,000,000). The said bonds authorized by the said act, with the guaranty of the State of South Carolina endorsed thereon, were thereafter in fact duly issued.

10. That by an act of the General Assembly of the State of South Carolina approved the 2nd day of March, 1872, entitled "An act to relieve the State of South Carolina of all liability for its guaranty of the bonds of the Blue Ridge Railroad Company by providing for the securing and destruction of the same," it was recited that the bonds of the aforesaid Blue Ridge Railroad Company, with the guaranty of the State endorsed thereon, had been issued, and that the State was desirous of withdrawing them, and thus relieving herself from such liability, and provided that all such bonds then held by the official agent of the State of South Carolina as security for advances of money made to the railroad company by the State should be delivered up and cancelled, relieving the railroad company from all liability on account of such advances, and further providing that upon the surrender by the company to the State of the balance of the issue of four millions of dollars of such bonds, issued and guaranteed as aforesaid, the State treasurer should issue in lieu thereof, to the amount of one million eight hundred thou-

8 sand dollars, certificates of indebtedness, styled revenue bond scrip, expressing that the sum mentioned therein is due by the State of South Carolina to bearer, and that the same will be received in payment of taxes and all other dues to the State except special tax levied to pay interest on the public debt, and that "if the said company shall not be able to deliver all of said bonds at one time, the treasurer is authorized and required to deliver to the said president such amount of such treasury certificates as shall be proportioned to the amount of bonds delivered." The act further provides:

"SEC. 4. That the faith and funds of the State are hereby pledged for the ultimate redemption of said revenue bond scrip, and the county treasurers are hereby required to receive the same in pay-

ment of all taxes levied by the State, except in payment of special tax levied to pay interest on the public debt, and the State treasurer and all other public officers are hereby required to receive the same in payment of all dues to the State; and still further to provide for the redemption of said revenue bond scrip, an annual tax of three mills on the dollar, in addition to all other taxes, on the assessed value of all taxable property in the State, is hereby levied to be collected in the same manner and at the same time as may be provided by law for the levy and collection of the regular annual taxes of the State; and the State treasurer is hereby required to retire, at the end of each year from their date, one-fourth of the amount of the treasury scrip hereby authorized to be issued, until all of it shall be retired, and to apply to such purpose exclusively the taxes hereby required to be levied.

"SEC. 5. That if any such revenue bond scrip is received
9 in the treasury for the payment of taxes, the treasurer be, and he is hereby, authorized to pay out such revenue bond scrip in satisfaction of any claim against the treasury, except for interest that may be due on the public debt."

II. That this plaintiff being then a man of means and engaged in the banking business in the city of New York, in the State of New York, application was made to him by the State treasurer of the State of South Carolina, and the financial agent of the State of South Carolina resident in the city of New York, accompanied by two bank presidents of the city of Columbia, the capital of said State of South Carolina, to advance the funds necessary to take up and retire certain of the Blue Ridge Railroad bonds so guaranteed by the State of South Carolina and which had been then duly issued by the said railroad company; but the credit of the State of South Carolina in New York and other financial centres had been greatly impaired, and it was with difficulty that this plaintiff was induced to accede to the proposition, and as representing a prominent banking-house in the city of New York this plaintiff had previously refused to consider any proposition for becoming interested in the said Blue Ridge Railroad bonds, or in the revenue bond scrip intended to make up and retire the same. But it being represented to this plaintiff that it was a matter of great importance to the finances of the State of South Carolina to have the four millions of dollars of the Blue Ridge Railroad bonds so guaranteed by the State of South Carolina retired, and with an assurance that there should be placed in his hands $1,005,000 of the revenue bond scrip as collateral security for any money he should advance in the matter of withdrawing from hypothication the said Blue Ridge Railroad bonds, he
10 consented to advance the sum of three hundred and forty-four thousand nine hundred and twenty-five dollars in actual cash, and with such sum he redeemed the sum of two millions nine hundred and two thousand dollars of the aforesaid Blue Ridge Railroad bonds, with all their coupons attached; and delivered the same to the treasurer of the State of South Carolina with all of the coupons thereto attached, and the said bonds and attached coupons, mutilated

and cancelled in accordance with the provisions of said act, are now in the office of the State treasurer of said State.

12. That this plaintiff thereupon received from the State treasurer of the State of South Carolina one million five thousand dollars in the aforesaid revenue bond scrip which was thus duly issued by the State of South Carolina.

13. That the said Blue Ridge Railroad bonds so issued by said corporation and guaranteed by the State of South Carolina, as aforesaid, were the valid obligations of said State, and the event has since proven that if not taken up and retired the State of South Carolina would have been compelled to pay the same in full, and this plaintiff has continued to be and now is the owner and holder of said revenue bond scrip, as aforesaid, and he charges that by the tender thereof to the treasurer of the State of South Carolina the mortgage of the said J. W. Alexander was extinguished by operation of law.

14. That this plaintiff, being so seized of the premises above described, on the — day of ——, 1897, for valuable consideration, entered into a contract in writing with the defendant, Howard P. Eells, whereby the said plaintiff contracted to convey the said
11 premises to the said defendant, Howard P. Eells, in fee-simple, free from any valid lien or encumbrance whatever, at and for the price of twenty thousand dollars, to be paid to this plaintiff in cash, and this plaintiff avers that the value of said premises is now and was at the time of said contract at least said sum of twenty thousand dollars.

15. That this plaintiff is now ready and has offered to deliver to said Howard P. Eells a good and sufficient deed in law to convey the said premises to him in fee-simple, but the said defendant, Howard P. Eells, refuses to comply with his said contract and to receive said deed and pay to this plaintiff the said purchase price, averring that the said revenue bond scrip so tendered by the said J. W. Alexander in payment of the amount due upon his bond and mortgage, as aforesaid, was not the valid obligation of the State of South Carolina, and therefore did not constitute a legal tender for said debt, and that by reason thereof the said tender did not operate as an extinguishment of the lien of said mortgage; and this plaintiff alleges that there are no liens or encumbrances upon said premises, save that the authorities of the State of South Carolina have failed and refused to enter up taxes due to the State of South Carolina and to the city of Columbia on account of the property, but this plaintiff avers that the sum of five hundred dollars would be adequate to cover all liability therefor, and this plaintiff now brings into this court a deed of said premises, duly executed, and tenders the same to the said defendant and offers to allow the said defendant to retain
in his possession so much of the purchase price agreed upon,
12 as aforesaid, as may be ascertained by this court to be sufficient as a fund to meet the taxes which should have been charged up against the said premises, as aforesaid.

In tender consideration whereof and forasmuch as the plaintiff is remediless in the premises at and by the strict rules of the common law and can only have relief in a court of equity, where matters of

this nature are properly cognizable and relievable, to the end, therefor-, that an account may be taken by and under the direction of the decree of this honorable court to ascertain the amount to be retained by the said defendant as indemnity against the taxes chargeable upon said premises, as aforesaid, and that the defendant may be decreed to accept from said plaintiff the deed of said premises hereby tendered, and to pay to this plaintiff the sum of twenty thousand dollars, with interest thereon from this date, less the sum so to be reserved by him on account of said taxes, as aforesaid, and that this plaintiff may have such other and further relief in the premises as the nature of the circumstances in this case may require and to your honors shall seem meet, may it please your honors to grant unto the plaintiff a writ of subpœna, to be addressed to the said Howard P. Eells, thereby commanding him, at a certain time and under certain penalties therein to be limited, personally to appear before this honorable court, and then and there full, true, direct, and perfect answer to make to all and several the premises, and further to stand to, perform, and abide by such further order, direction, and decree therein as to this honorable court shall seem meet.

WM. H. LYLES,
JAMES M. SHALLENBERGER,
Plaintiff's Solicitors.

13 THE UNITED STATES OF AMERICA, } ss:
District of New York, }

On this 27th day of December, 1897, before me personally appeared Edward B. Wesley, the above-named plaintiff, who made solemn oath that he had read the foregoing bill of complaint subscribed by him and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

EDWARD B. WESLEY.

[SEAL.] JOHN A. WILLIAMS,
Notary Public, Kings Co.

Ctf. on file in N. Y. Co.

CLEVELAND, OHIO, *Dec. 28th*, 1897.

I hereby waive the issuing and service of process and enter my appearance to the within bill.

HOWARD P. EELLS,
By A. ST. J. NEWBERRY,
His Solicitor.

14 Endorsements on bill of complaint. 5734. The United States circuit court in and for the eastern division of the northern district of Ohio. Edward B. Wesley, a citizen of the State of New York, plaintiff, *vs.* Howard P. Eells, a citizen of the eastern division of the northern district of Ohio, defendant. Bill of com-

plaint, with entry of appearance, &c. Original. Jas. M. Shallenberger, Wm. H. Lyles, pl'ff's sol'r-. Filed Jan. 19, 1898. Irvin Belford, clerk U. S. circuit court, N. D. O.

15 *Order of Continuance.*

October Term, A. D. 1897, to wit, January 31st, 1898.

Present: Honorable Augustus J. Ricks, United States district judge.

EDWARD B. WESLEY
vs.
HOWARD P. EELLS. } # 5734. Chancery.

This cause is continued to the next term of this court.

16 *Answer.*

In the Circuit Court of the United States within and for the Northern District of Ohio, Eastern Division.

EDWARD B. WESLEY, Complainant,
vs.
HOWARD P. EELLS, Defendant. } No. 5734.

The answer of Howard P. Eells, the defendant, to the original bill of complaint of Edward B. Wesley, complainant.

This defendant, now and at all times hereafter, saving to himself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering, saith:

1. That he admits that the complainant is a citizen of the State of New York, and that this defendant is a citizen of the city of Cleveland and of the northern district and eastern division of the State of Ohio.

2. That he admits the statements and allegations of said bill contained in paragraphs one, two, three, four, five, eight, nine, ten, eleven, twelve, and fourteen to be true.

3. As to the allegations in the second paragraph numbered five of said bill, the defendant admits that the allegations of fact therein are true, excepting, however, that defendant does not admit, but denies, the conclusion of law in said paragraph averred, viz, that the said revenue bond scrip was a valid obligation of the State of South Carolina.

4. As to the allegations in paragraph numbered six of said bill, the defendant saith that he has no knowledge or information whereby he can form an opinion or belief whether the same
17 are true or not, and therefore denies the same and prays that proof may be made thereof.

5. As to all the allegations of said bill contained in paragraph seven thereof, this defendant admits the allegations of fact therein set out, but denies the conclusion of law therein averred, viz, that said mortgage having been extinguished by the tender of the amount due thereon, there was no authority of law for the recording of the same.

6. As to all the allegations contained in paragraph fifteen of the said bill, the defendant admits that it is true that said plaintiff has offered to deliver to the defendant a sufficient deed of the premises in said bill described, and that this defendant has refused to comply with his contract, receive said deed, and pay said plaintiff the purchase price, averring that the said revenue bond scrip tendered by the said J. W. Alexander was not the valid obligation of the State of South Carolina, did not constitute a legal tender for said debt, and did not operate as an extinguishment of the lien of said mortgage, and that said deed did not convey a clear and unincumbered title thereto.

7. This defendant further admits that there are no liens or incumbrances upon said premises, saving and except the mortgage in said bill described, excepting an unentered and uncertain amount of taxes due to the State of South Carolina and the city of Columbia on account of the property, which amount of taxes when ascertained should be deducted from the purchase price payable by this defendant to said plaintiff for said premises, provided any amount whatever shall be by the court found payable; and the defendant prays the court that such amount of incumbrance for the taxes may be ascertained and the same may be deducted from the amount the court may find payable by the defendant to plaintiff, if in fact the court shall find any amount whatever so payable.

8. And the defendant, further answering, says that the State
18 of South Carolina, by its General Assembly, did, on or about the 13th day of March, A. D. 1872, pass a certain act entitled "An act to abolish the office of State auditor, and to confer the duties of his office upon the comptroller general," which act is still in force and effect.

And the State of South Carolina, by its General Assembly, did, on or about the 22nd day of October, 1873, duly pass an act wherein and whereby section 4 of the act of March 2nd, 1872, in said bill of complaint referred to, was duly repealed, and which further provided that the comptroller general of the State of South Carolina was forbidden to levy any tax for any purpose whatever, unless expressly thereafter authorized so to do by statute; which said act of October 22nd, 1873, is still in full force and effect.

And the State of South Carolina, by its General Assembly, on or about the 22nd day of December, 1873, did duly pass a certain act, entitled "An act to raise supplies for the fiscal year commencing November 1st, 1873, and to alter and amend the law relating to the collection of taxes;" which said act is still in full force and effect, and among other things provides that county auditors and county treasurers are forbidden to collect any taxes for the redemption of the said revenue bond scrip, and further providing that any State

or county officer violating any of the provisions of said act shall be guilty of felony and punished as in the act provided.

And this defendant avers that if the said revenue bond scrip ever had any validity whatever, which this defendant does not admit, but denies, that by the passage of the laws above referred to such validity was destroyed and said revenue bond scrip ceased to have any force or effect whatever.

9. This defendant further avers that the act of the legislature of South Carolina passed March 2nd, 1872, which authorized the execution and delivery of the said revenue bond scrip, was in violation of article one, section ten, of the Constitution of the United States, inasmuch as the said revenue bond scrip are bills of credit, and the said scrip is consequently from its inception illegal, void, and of no validity.

10. This defendant further avers that said act of March 2, 1872, authorizing the said revenue bond scrip, is in violation of section seven, ten, and fourteen of article nine of the constitution of the State of South Carolina, and said act is therefore null and void.

11. And the defendant, further answering, says on information and belief that the State of South Carolina and its legislature, officers, and agents now and for a long time past have declared and maintained that said revenue bond scrip was not a valid obligation of the State of South Carolina, and have refused to recognize the same or accept the same in payment of any dues or indebtedness of said State in accordance with the terms of said scrip, and that certain persons, whose names are unknown to this defendant, but whom the defendant avers to be officers, agents, and employees of the State of South Carolina, have taken possession of the premises in said bill described, claim to hold the same as the property of the State of South Carolina, and retain the same by force of arms, and have refused and still refuse to surrender the said premises to any person whatever claiming title to the same under the mortgage made by Mr. J. W. Alexander, described in said bill to be in the State of South Carolina, and insisting that said mortgage is a subsisting and valid lien upon the premises aforesaid and has been in no way satisfied or discharged.

12. And this defendant further avers that he has been at all times and now is ready and willing to perform his said contract and to make payment as therein specified, provided that he can receive a full and perfect title to said premises, free from any valid lien, and be protected in the quiet and peaceable possession thereof.

13. And this defendant, further answering, denies that any other matter, cause, or thing in said bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, avoided, or denied, is true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court

shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

A. ST. J. NEWBERRY,
Defendant's Solicitor.

THE STATE OF OHIO, }
Cuyahoga County, } *ss:*

Howard P. Eells, the above-named defendant, being duly sworn, says that all the statements and allegations in the foregoing answer contained are true, excepting so far as the same are stated on information and belief, and as to them he believes them to be true.

H. P. EELLS.

Sworn to before me by the said Howard P. Eells and by him subscribed in my presence this third day of February, A. D. 1898.

BENJ. A. GAGE,
[SEAL.] *Notary Public.*

21 Endorsements on answer: 5734. E. B. Wesley, complainant, *vs.* Howard P. Eells, defendant. Answer. Filed Feb. 3, 1898. Irvin Belford, clerk U. S. circuit court, N. D. O. A. St. J. Newberry, defendant's solicitor.

22 *Replication.*

The United States Circuit Court in and for the Eastern Division of the Northern District of Ohio. In Equity.

EDWARD B. WESLEY, a Citizen of the State of New York, Plaintiff,
vs.
HOWARD P. EELLS, a Citizen of the Eastern Division of the Northern District of Ohio, Defendant. } Replication.

This repliant, saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendant, for replication thereunto saith that he doth and will aver, maintain, and prove his said bill to be true, certain, and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in law to be replied unto by this repliant; without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

WM. H. LYLES,
J. M. SHALLENBERGER,
Plaintiff's Solicitors.

23 Endorsements on replication: The State of Ohio. In the U. S. circuit court, northern district, eastern division. Edward B. Wesley, complainant, *vs.* Howard P. Eells, defendant. Replication. Filed Feb. 4, 1898. Irvin Belford, clerk U. S. circuit court, N. D. O. Wm. H. Lyles, James M. Shallenberger, plaintiff's solicitors.

24 *Agreement to Submit and Memo. of Documentary Evidence.*

The United States Circuit Court in and for the Eastern Division of the Northern District of Ohio.

EDWARD B. WESLEY, a Citizen of the State of New York, Plaintiff,
vs.
HOWARD P. EELLS, a Citizen of the Eastern Division of the Northern District of Ohio, Defendant.
} In Equity.

The above-entitled cause being at issue upon complainant's bill of complaint, defendant's answer, and the plaintiff's replication thereto—

It is hereby agreed by and between the solicitors representing the plaintiff and the defendant—

That said cause shall be submitted to the court upon the documentary evidence taken and noted below and upon written arguments to be submitted by the solicitors for the plaintiff and defendant.

WM. H. LYLES,
J. M. SHALLENBERGER,
Plaintiff's Solicitors.
A. ST. J. NEWBERRY,
Def't's Solicitor.

Memorandum of Documentary Evidence Introduced in the Above-entitled Cause under the Above Stipulation.

Plaintiff's testimony.

1st. Section 1894 of the General Statutes of the State of
25 South Carolina of 1893, as follows: "Section 1894. Any person who shall have received full payment or satisfaction or to whom a legal tender shall have been made of his debt, damages, costs, and charges, secured by mortgage on real estate, shall, at the request of the mortgagor, or his legal representative, or of any other person being a creditor of the said debtor, or a purchaser under him, or having an interest in any estate bound by such mortgage, and on tender of the fees of office for entering, such satisfaction shall within three months after such request made, enter satisfaction in the proper office on such mortgage, which shall forever thereafter discharge and satisfy the same."

Plaintiff then offers in evidence the case of Salinas *vs.* Ellis, 25th S. C. Reports, 337, where the following principles were decided:

"1. After a mortgage of land was past due and before action brought, the mortgagor made tender to the attorney of the mortgagee of the amount due, which under instructions from the mortgagee was refused, because it did not include another distinct debt due by the mortgagor, but not covered by the mortgage; held, that the lien of the mortgage was discharged.

"2. There was no proof that the tender was made on the condition of entry of satisfaction, but if so, such condition would have been a legal right, and would not have vitiated the tender.

"3. The mortgagor, having failed afterwards to make his tender good on the offer of the mortgagee to accept it, and having failed to bring the amount into court, the tender so made, while it discharged the lien of the mortgage, did not prevent a judgment for the full debt."

26 Plaintiff then offers in evidence act of the General Assembly of the State of South Carolina approved the 24th day of December, A. D. 1890, 20th Statute-, 707, entitled "An act to provide for the sale of lot and building known as Agricultural Hall, etc., and to appropriate the proceeds thereof." By this act the lot and building described in the complaint were ordered to be sold by the commissioners of the sinking fund of the State of South Carolina. This is the act referred to in paragraph three of the complaint.

Plaintiff then offers in evidence act of the General Assembly of the State of South Carolina approved March 2nd, A. D. 1872, 15th Statute-, 79, entitled "Act to relieve the State of South Carolina of all liability for its guaranty of the bonds of the Blue Ridge Railroad Company by providing for the securing and destruction of the same." This act is quoted in full in the printed brief of argument of Amos D. Williams *vs.* Johnson Hagood, com-troller general, reported in 98 U. S., 72 (Book 25, L. ed., 51). Brief of argument is herewith filed only for the purpose of giving the act in question, pages four to eight, both inclusive.

Plaintiff then offers in evidence section one of article two of the constitution of the State of South Carolina as follows, to wit: "Legislative power.—Section 1. The legislative power in this State, shall be vested in two distinct branches, the one to be styled 'the senate,' and the other, 'the house of representatives,' and both together, 'the General Assembly of the State of South Carolina.'"

Also article fourteen, section four, as follows, to wit: "Claims against State.—Section 4. The General Assembly may direct by law, in what manner claims against the State may be established and adjusted."

27 Plaintiff then offers in evidence act of the General Assembly of the State of South Carolina entitled "An act to incorporate the Blue Ridge Railroad Company in South Carolina," approved the 16th day of December, A. D. 1852, 12th Statutes, 182. This act recited: "Whereas, it is highly expedient, as well for the interest of a large portion of the people of North Carolina, Tennessee and of Georgia, as of South Carolina, that such a railroad communication should be established, but such communication cannot be effected without the co-operation of this State, in opening the way

for the same along that part of the proposed route which is in South Carolina." By sec. 13 of this act the comptroller general of the State of South Carolina was authorized and directed to endorse the guaranty of the State of South Carolina on $1,250,000 of the bonds of the Blue Ridge Railroad Company, which were only to be issued, however, upon certain conditions, and by section 14 of that act a statutory lien upon the property and franchises of the corporation for the security of the bonds was imposed. It is, however, admitted that the bonds, with the guaranty endorsed, were never delivered.

Plaintiff then offers in evidence an act of the General Assembly of the State of South Carolina entitled "An act to authorize aid to the Blue Ridge Railroad Company in South Carolina," approved December 21, A. D. 1854, 12th Statutes, page 327. This act provided for the subscription by the State of South Carolina of $1,000,000 to the capital stock of the Blue Ridge Railroad Company, and by section 3 provides: "That the State shall have the same rights in the company, and in its management, as is reserved to private shareholders, and the General Assembly shall at all times have authority to examine into its condition, and the said company shall annually submit to the General Assembly, a report,
28 exhibiting the condition of its affairs and its prospects." By section 7 of the act the guaranty of the State was directed to be endorsed upon the bonds of the company, not to exceed the amount of $1,000,000, and the provision in the act of 1852 above referred to, authorizing the endorsement of the guaranty of the State, is repealed.

Plaintiff then offers in evidence an act of the General Assembly of the State of South Carolina (Dec. 22nd, 1859, 12 Stats., 651) entitled "An act to authorize the boards of commissioners of roads of certain districts to make subscription to the Greenville & French Broad railroad and to the Blue Ridge railroad in South Carolina." This act was of the character indicated by its title.

Plaintiff then offers in evidence an act of the General Assembly of the State of South Carolina approved the 22nd day of December, 1859, 12th Statutes, 654, entitled "An act to grant aid to the Blue Ridge railroad." This act directed the comptroller general of the State of South Carolina to subscribe $310,000 to the stock of the Blue Ridge railroad in South Carolina for the purpose of completing the said road to Walhalla; said amount to be paid in bonds of the State of South Carolina, payable in five years, at six per cent. per annum, to be signed by the comptroller general and issued to the said company upon the making of the said subscription. It also provided that the aid granted by this act shall not be construed to exonerate the stockholders from paying up their subscriptions to the capital stock of the said company, but the company shall call in and apply the same according to the provisions of their charter.

29 Plaintiff then offers in evidence an act of the General Assembly of the State of South Carolina approved the 15th day of September, A. D. 1868, entitled "An act to authorize additional aid to the Blue Ridge Railroad Company in South Carolina." This act recited the act of 1854, 14th Statutes, page 25, above referred to,

and the conditions therein prescribed, which were to be performed before the delivery of the bonds, with the guaranty of the State endorsed, and then recited: "Whereas, the comptroller general of the State has not endorsed any of the bonds issued by the said Blue Ridge Railroad Company in South Carolina, under the authority of said act, and whereas, the conditions imposed upon said endorsement by said section 7, have become impossible and injudicious, while the necessity of the completion of said road has become more urgent in the interest of the State."

Section 1 of said act provides as follows, to wit:

"SECTION 1. Be it enacted by the senate and house of representatives of the State of South Carolina, now met and sitting in General Assembly, and by the authority of the same, without reference to the said provisions and conditions, whenever a contract or contracts may be made by the president of the said company, under its seal, and as provided by said act, and not exceeding one million of dollars, it shall be the duty of the comptroller general to endorse thereon, that the faith and funds of the State are pledged to the faithful performance of the said contract or contracts as respects the provisional payment both of the principal and interest, according to the terms of the said contract or contracts, provided that so much of said issue as may be necessary not exceeding $300,000 shall be applied to the redemption of the present bonded indebtedness of said company."

By section 2 of the said act the guaranty of the State was
30 directed to be endorsed by the comptroller general upon an additional three million of dollars of the bonds of said company, and provided that henceforth the franchises and privileges, rights and property of the company should stand "pledged and mortgaged to the State, without any further act or deed on the part of the company, for the faithful and punctual performance on the part of the said company of such contract in priority and perference to any other debt which the said company may hereafter create or incur, and further provided that the said bonds or any part thereof shall not be used unless upon the express condition that upon application to the Congress of the United States or to private capitalists the amount of three million of dollars in currency, or so much of that sum as may be necessary, shall be furnished in exchange or upon the security of said bonds." This was the act under which the comptroller general of the State of South Carolina endorsed the guaranty of said State upon the four millions of dollars of bonds of said company mentioned in the recital of the act of 1872 first above referred to. It is admitted that this act of 1868 does not appear by the journals of the senate and the house of representatives to have been passed by a two-thirds vote of the members of each branch of the General Assembly.

Plaintiff then offers in evidence Senate Journal of the State of South Carolina, session 1871–1872, page 526, where it is recorded that the act of 1872 first above referred to, entitled "An act to relieve the State of South Carolina of all liability for its guaranty of the bonds of the Blue Ridge Railroad Company by providing for

the securing and destruction of the same," was duly passed
31 by the senate by a vote of 21 yeas to 5 nays, duly recorded on the said journal.

Plaintiff then offers in evidence the same Journal of the Senate, at page 572, where the act is passed over the veto of the governor by a vote of 22 yeas to 6 nays, which was duly recorded on the said journal.

Plaintiff then offers in evidence the Journal of the House of Representatives of the State of South Carolina, session of 1871–1872, page 417, where it is duly recorded that the same act passed its third reading in the house of representatives by a vote of 87 yeas to 19 nays, duly recorded in the manner prescribed by the Constitution; also at page 546, where it is duly recorded that the same act was passed over the veto of the governor by a vote of 84 yeas to 18 nays, duly recorded according to the provisions of the constitution.

Plaintiff then offers in evidence the reported case of the State *vs.* Spartanburg & Union Railroad Company, 8th S. C., 129, where it appears that the S. & U. railroad was sold under foreclosure of a statutory lien taken by the State of South Carolina as security for her endorsement upon the bonds of the said company.

Plaintiff then offers in evidence the decision of the supreme court of the State of South Carolina in the case of Gibbs *vs.* G. & C. Railroad Company, 13th S. C., 228, where it appears that the Columbia & Greenville railroad was sold under foreclosure of a like statutory lien to secure the endorsement of the State of South Carolina on the bonds of that company.

Plaintiff then offers in evidence the case of Hand *vs.* C. & S.
32 Railroad Company, 12th S. C., 314, where it appears that the supreme court of South Carolina, in the adjustment of the claims against the Charleston & Savannah railroad, recognized the validity of the claims of holders of the bonds of said company guaranteed by the State of South Carolina under the act of 1869.

Plaintiff then offers in evidence article 16 of the constitution of the State of South Carolina, adopted as an amendment in 1873. This article provides: "Public debt—Vote of people.—To the end that the public debt of South Carolina may not hereafter be increased without the due consideration and free consent of the people of this State, the General Assembly is hereby forbidden to enact any further debt or obligation either by the loan of the credit of the State, by guaranty, endorsement, or otherwise, except for ordinary and current business of the State, without first submitting the question as to the creation of any such new debt, guaranty, endorsement, or loan of its credit to the people of this State at a general State election and unless two-thirds of the qualified voters of this State voting on the question, shall be in favor of a further debt, guaranty, endorsement or loan of its credit, none such shall be created or made."

Plaintiff then offers in evidence the case of The State *vs.* Cardozo, treasurer, 5th S. C., 297, and Bond Debt cases, 12 S. Car., page 200; also the case of Morton Bliss & Co. *vs.* The Comptroller Gen'l, 4 S. C., 430.

Defendant then offers in evidence on his part section 7 of article

9 of the constitution of the State of South Carolina, as follows, to wit: "Extraordinary expenditures.—Sec. 7. For the purpose of defraying extraordinary expenditures, the State may contract
33 public debts but such debts shall be authorized by law for some single object to be distinctly specified therein, and no such law shall take effect until it shall have been passed by a vote of two-thirds of the members of each branch of the General Assembly, to be recorded by yeas and nays upon the journal of each house respectively, and every such law shall levy a tax annually sufficient to pay the annual interest of such debt."

Defendant then offers in evidence section 10 of the same article: "Section 10. No scrip certificate or other evidence of State indebtedness shall be issued except for the redemption of stock, bonds or other evidences of indebtedness, previously issued or for such debts as are expressly authorized in this constitution."

Defendant then offers in evidence section 14 of the same article: "Section 14. Any debt contracted by the State shall be by loan on State bonds of amounts not less than $50.00 each, with interest, payable within 20 years after the final passage of the law authorizing such debt. A correct registration of all bonds shall be kept by the treasurer in numerical order, so as always to exhibit the number and amount unpaid, and to whom severally made payable."

Defendant then offers in evidence section 3 of article 1 of the constitution, as follows, to wit: "Section 3. All political power is vested in and derived from the people only. Therefore they have the right at all times to modify their form of government in such manner as they may deem expedient, when the public good demands."

Defendant then offers in evidence section 41 of article 1 of the constitution of South Carolina, as follows, to wit: "The enumeration of rights in this constitution shall not be construed to impair
34 or deny others retained by the people, and all powers not herein delegated remain with the people."

Defendant then offers in evidence an act of the General Assembly of the State of South Carolina entitled "An act to abolish the office of State auditor, and to confer the duties of his office upon the comptroller general." Passed March 13th, 1872.

Defendant then offers in evidence an act of the General Assembly of the State of South Carolina approved October 22nd, 1873, entitled "An act to repeal section four (4) of an act to relieve the State of South Carolina of all liability for its guaranty of the bonds of the Blue Ridge Railroad Company, by providing for the securing and destruction of the same, approved March 2nd, 1872, and to repeal so much of section 72, chapter 12, title three of the General Statutes as authorizes the State auditor to give notice annually to each county auditor of the rates per centum to be levied for various State purposes." This act repealed the section referred to.

Defendant then offers in evidence act of the General Assembly of the State of South Carolina approved the 22nd day of December, 1873, entitled "An act to raise supplies for the fiscal year commenc-

ing November 1, 1873, and to construe and amend the law relating to the collection of taxes."

Whereby section 11 provides that county auditors and county treasurers are forbidden to collect any taxes for the redemption of the said revenue bond scrip, and further providing that any State or county officer violating any of the provisions of said act shall be guilty of felony and punished as in the act provided.

35 And defendant then offers in evidence the written contract between himself and the plaintiff for the purchase of the property in question, a copy of which is hereto attached, marked "Exhibit B," and made a part of this stipulation.

The defendant also offers in evidence a copy of one of the bonds of the Blue Ridge Railroad Company referred to in the act of the third of March, 1872, herein mentioned (all of said bonds being similar), which is hereto attached, marked "Exhibit C," and made a part hereof.

The defendant also offers in evidence copies of the revenue bond scrip referred to in the pleadings in this cause, which are hereto attached and marked respectively "Exhibit D," "Exhibit E," and "Exhibit F," and made parts hereof.

It is admitted by the parties hereto that the plaintiff's right to the possession of the premises in said original bill described has been disputed by the State of South Carolina and its officers and employees, and that they have endeavored to keep him out of the possession thereof, but that the plaintiff's right to the immediate possession thereof has been established by decree of the United States Supreme Court in the case of J. E. Tindal and J. R. Boyles, plaintiffs in error, *v.* Edward B. Wesley, defendant in error, October term, 1896, to be found, probably, in 167 U. S. Rep.; also by the circuit court of appeals of the United States for the fourth circuit, sitting at Richmond, in a cause entitled "*Ex parte* Samuel W. Vance, petitioner, plaintiff in error, *v.* Edward B. Wesley, respondent, defendant in error; in case of Edward B. Wesley, plaintiff, *v.* J. E. Tindal and J. R. Boyles, defendants," and that plaintiff is ready to deliver the possession of the property.

36 (EXHIBIT C.)

(*Copy of Bond of the Blue Ridge Railroad Company.*)

UNITED STATES OF AMERICA.

Guaranteed by the State of South Carolina under acts of 1854 and 1868.

$1,000 in United States gold coin or £200 British sterling.

No. 1. *Mortgage Loan*, $4,000,000. No. 1.

The Blue Ridge Railroad Company,

Comprehending the "Blue Ridge Railroad Company" in South Carolina, the "Blue Ridge Railroad Company" in Georgia, the "Tennessee River Railroad Company" in North Carolina, the "Knoxville and Charleston Railroad Company" in Tennessee, and the "Pendleton Railroad Company" in South Carolina, and extending by its connections from Charleston, South Carolina, to Knoxville, Tennessee.

Whereas, the General Assembly of South Carolina, by an act passed on the twenty-first day of December, eighteen hundred and fifty-four, entitled An act to authorize aid to the "Blue Ridge Railroad Company in South Carolina," provided that the faith and funds of the State of South Carolina be, and the same are hereby pledged to secure the punctual payment of any contracts which shall be made for borrowing money by the "Blue Ridge Railroad Company in South Carolina," from any persons, companies or corporations, to any amount not exceeding one million of dollars; and when such contracts shall be made by bond or bonds, signed by the president of the company, under its seal, and countersigned by the secretary or treasurer thereof, it shall be the duty of the comptroller general to endorse thereon that the faith and funds of the State are pledged to the faithful performance of said contract or contracts, as it respects the punctual payment both of the principal and interest, according to the terms of said contract or contracts: Provided, that certain conditions particularly recited in section seven of said act be first executed, and the several companies above mentioned secure the said endorsement by a mortgage of all their property in the States of South Carolina, Georgia, North Carolina, and Tennessee, duly executed and recorded:

37 And whereas, by another act of the General Assembly of South Carolina, approved on the sixteenth day of September, eighteen hundred and sixty-eight, the said conditions recited in the seventh section of the first mentioned act have been released, and it is enacted that without reference to the said provisos and conditions, whenever any contract may be made by the president of said company under its seal, and as provided by said act, and not exceeding four million of dollars, it shall be the duty of the comptroller general to endorse thereon that the faith and funds of the State are

pledged to the faithful performance of said contract or contracts, as respects the punctual payment both of the principal and interest, according to the terms of said contract or contracts:

And whereas, a mortgage hath been duly executed by the several companies before named, to secure said four million loan, and this bond is one among those protected thereby,

Now, know all men by these presents, that the Blue Ridge Railway Company, in South Carolina, will pay to the holder of this bond, on presentation of the same, at either of the agencies of said company, in New York, Charleston, or London, at the expiration of twenty years from the date hereof, one thousand dollars in American gold coin, if presented at either of the agencies in the United States, or two hundred pounds sterling at the agency in London, at the option of the holder, interest thereon to be paid semi-annually, at the rate of seven per cent. per annum, on the first day of January and July of each year, at either of the above agencies, upon presentation of the annexed coupons or warrants for thirty-five dollars American gold coin, if presented at either of the agencies in the United States, or seven pounds sterling in London, each at option of the holder.

In testimony whereof the said company has hereunto caused to be affixed its corporate seal and these presents to be subscribed by its president and countersigned by its secretary this first day of July, 1869.

J. W. HARRISON, *President.*

W. H. D. GAILLARD, *Secretary.*

[CORPORATE SEAL.]

(Indorsements.)

We, Henry Clews, of the city of New York, and Henry Gourdin and George S. Cameron, of the city of Charleston, S. C., hereby certify that the Blue Ridge Railroad Company in South Carolina and the several railroad companies herein named have executed to us a deed of trust or mortgage, purporting to convey their several roads and their appurtenances, with all the rights and franchises, property, and privileges of said companies, as specified in the instrument, in trust for the benefit of the holders of the bonds of the Blue Ridge Railroad Company in South Carolina, of similar tenor as the foregoing, to an amount not exceeding in all four million dollars, with power to take possession of, use, or sell the same or any part
38 thereof after a default in paying the interest or principal of the said bonds or any of them, and that the foregoing is one of the several bonds described in and secured by said deed or mortgage; and that we have caused the said deed to be recorded in the proper offices of the States of "South Carolina," "Georgia," "North Carolina," and "Tennessee."

HENRY CLEWS,
H. GOURDIN,
GEO. S. CAMERON,
Trustees.

COMPTROLLER GENERAL'S OFFICE,
COLUMBIA, S. C., *May 2d, A. D.* 1870.

Whereas by acts of the General Assembly of the State of South Carolina passed on the twenty-first day of December, eighteen hundred and fifty-four, and the sixteenth day of September, eighteen hundred and sixty-eight, respectively, the comptroller general is authorized and directed to endorse the guarantee of the State upon the bonds of the Blue Ridge Railroad Company in South Carolina:

Now, therefore, I, J. L. Neagle, comptroller general of the State of South Carolina, by virtue of the authority vested in me by the acts aforesaid, do hereby endorse this bond and pledge the faith and funds of the State of South Carolina for the payment of the principal of the within bond and the interest that may accrue thereon as therein stipulated.

In testimony whereof I have hereunto set my hand as comptroller general on the day and date above written.

J. L. NEAGLE,
Comptroller General.

39 (*Copies of Revenue Bond Scrip.*)

(EXHIBIT D.)

"Original scrip."

(Upper margin.)

One hundred dollars. One hundred dollars.

(Left margin.)

One hundred dollars.

Act March, 1872.

(Right margin.)

One hundred dollars.

Act March, 1872.

(Lower margin.)

One hundred dollars. One hundred dollars.

(Body.)

$100. No. 21. $100.

Revenue Bond Scrip.

(Palmetto tree.)

THE STATE OF SOUTH CAROLINA,
COLUMBIA, S. C., *March* —, 1872.

Receivable as one hundred dollars in payment of all taxes and dues to the State, except special tax levied to pay interest on public debt.

NILES G. PARKER,
State Treasurer.

40 (EXHIBIT E.)

Washington scrip.

(Top margin.)

Ten Ten Ten. Revenue bond scrip. Ten Ten Ten.

(Left margin.)

Ten Ten Ten Ten Ten Ten Ten.

Vignette.

(Right margin.)

Ten Ten Ten Ten Ten Ten Ten.

(Lower margin.)

Ten Ten Ten. Act March 2, 1872. Ten Ten Ten.

(Body.)

No. 8661. STATE OF SOUTH CAROLINA. X.

10. COLUMBIA, S. C., *March* 2, 1872.

Receivable as ten dollars in payment of all taxes and dues of the State, except special tax levied to pay interest on public debt.

NILES G. PARKER,
State Treasurer.

41 (EXHIBIT F.)

(Top margin.)

Five Five Five. Revenue bond scrip. Five Five Five.

(Left margin.)

Five Five Five Five Five Five.

Vignette.

(Right margin.)

Five Five Five Five Five Five.

(Lower margin.)

Five Five Five. Act March 2, 1872. Five Five Five.

(Body.)

No. 5468. STATE OF SOUTH CAROLINA. 5.

5. COLUMBIA, S. C., *March* 2, 1872.

Receivable as five dollars in payment of all taxes and dues of the State, except special tax levied to pay interest on public debt.

NILES G. PARKER,
State Treasurer.

(Endorsed.)

(Left margin.)

Five.

(Right margin.)

Five.

(Body.)

Issued under an act to relieve the State of South Carolina of all liability for its guarantee of the bonds of the Blue Ridge Railroad Company by providing for the securing and destruction of the same. March 2, 1872.

42 (EXHIBIT B.)

THE STATE OF NEW YORK:

This memorandum, executed in duplicate and interchangeably delivered, between Edward B. Wesley, a citizen of the State of New York, of the first part, and Howard P. Eells, a citizen of the State of Ohio, of the second part, witnesseth:

That the party of the first part hereby agrees to sell and convey to the party of the second part, at the price of twenty thousand dollars, all that lot, piece or parcel of land situate in the city of Columbia, and State of South Carolina, containing one-quarter of an acre, more or less, with the buildings and improvements thereon known as "Agricultural Hall" (formerly known as Parker's Hall) bounded on the north by land now or late of the estate of McAndrew, on the east by Richardson street, and on the south and west by lands now or formerly of Jacob C. Lyons; said lot of land being the same lot of land conveyed to Thomas B. Johnston by Jesse E. Dent, sheriff of Richland county, by deed dated the 3rd day of May A. D. 1875, and recorded in Book K. of Deeds, pp. 106 and 107; also, all that certain parcel or lot of land situate, lying and being in the city of Columbia, and State aforesaid, containing about one-eighth of an acre of land, bounded north by the Agricultural Hall building and lot immediately in rear thereof, east by Richardson street, south by lot now or formerly of Jacob C. Lyons, and west by lot of Maurice S. Parker; said lot being a rectangular parallelogram in shape and measuring on Richardson street from the southeastern corner of the said Parker block building south twenty-six feet, and from east to west two hundred and eight feet; the said lot also adjoining a part of the Agricultural Hall block and being the same lot of land
43 formerly conveyed to Thomas B. Johnston by Asher Palmer, of Columbia, in said State, by deed dated December 11, 1875, and recorded in R. M. C. conveyance office for Richland county, in Book K. of Deeds, pp. 319 and 320; the above-described two lots of land being the same conveyed to the State of South Carolina by deed of T. B. Johnston, dated April 9th, 1883, and recorded in the R. M. C. office in Book P. of Deeds, &c., p. 87; which premises were

afterwards conveyed to J. W. Alexander by the commissioners of the sinking fund of the State of South Carolina, and by J. W. Alexander afterwards conveyed to the undersigned, Edward B. Wesley; five thousand dollars of the purchase-money thereof to — paid in cash, and the balance secured by a bond and mortgage of the party of the second part, to be payable in four (4) equal annual installments, with interest from the date of the conveyance, at the rate of six (6) per centum per annum.

The party of the first part covenants and agrees, and this contract is made upon condition that the party of the first part is the owner in fee-simple of said premises, and that the same are, at the date of this contract, free from any valid or subsisting lien or encumbrance thereon.

Said Howard P. Eells, the party of the second part, agrees to purchase the said premises at the price and upon the terms stated, upon condition that the party of the first part is now seized of the said premises in fee, and that there is no valid or subsisting lien or encumbrance thereon.

In witness whereof, said parties have subscribed this memo-
44 randum, and interchangeably delivered the same this — day of October, 1897.

(Signed) EDWARD B. WESLEY.
HOWARD P. EELLS.

Witness:

—— ——.

Witness to H. P. E.:

—— ——.

45 *Exhibit Act Set Forth in Brief of Argument Williams vs. Hagood, Heretofore Referred to in Agreement to Submit and Memo. of Documentary Evidence.*

The act is as follows (Laws of South Carolina, 15th vol., p. 79):

"An act to relieve the State of South Carolina of all liability for its guaranty of the bonds of the Blue Ridge Railroad Company by providing for the securing and destruction of the same.

Whereas, the State of South Carolina has, by and in pursuance of the provisions of an act approved the fifteenth day of September, A. D. 1868, entitled 'An act to authorize additional aid to the Blue Ridge Railroad Company in South Carolina,' indorsed a guaranty of the faith and credit of the State on four millions of dollars of bonds, issued by the said Blue Ridge Railroad Company, comprehending the Blue Ridge Railroad Company in South Carolina; the Blue Ridge Railroad Company in Georgia; the Tennessee River Railroad Company in North Carolina; the Knoxville & Charleston Railroad Company in Tennessee, and the Pendleton Railroad Company in South Carolina, for the purpose of aiding the speedy completion of the said railroad, which bonds are liable for the debts of the said railroad companies; and whereas, the present condition of the finances of the State and of said companies *are* such as to make

the further continuance of said bonds on the market inexpedient and unadvisable, and a serious injury and prejudice to the credit of the State; and whereas, the existence of the said four millions of dollars of bonds, so guaranteed, creates a large liability upon the part of the State, which the treasurer may be required to meet at unforeseen and inopportune times; and whereas, the liability of the State, on account of such guaranty, should be faithfully met and discharged; therefore, in order to secure the recovery and destruction of the bonds and coupons of the said company, issued under
46 and in pursuance of the provisions of the aforesaid act, now pledged in the city of New York and elsewhere, and to relieve the State of all liabilities, whatsoever, by reason of its indorsement and guaranty of said bonds:

SEC. 1. Be it enacted by the senate and house of representatives of the State of South Carolina, now met and sitting in General Assembly, and by authority of the same, that the State treasurer is hereby directed, with the consent, in writing, of the president of the Blue Ridge Railroad Company, in South Carolina, to require the financial agent of the State, in the city of New York, immediately to deliver to the State treasurer all the bonds of the Blue Ridge Railroad Company, indorsed and guaranteed by the State of South Carolina, which are now in his possession, and held by him as collateral security for advances made by the said financial agent, by the order of the financial board to the Blue Ridge Railroad Company; and upon the delivery of said bonds the treasurer is hereby required to cancel the same in the manner hereinafter directed; and the said Blue Ridge Railroad Company shall thereupon be discharged from all liability to the State on account of such advances.

SEC. 2. That upon the surrender by the said company to the State treasurer, of the balance of the said four millions of dollars of bonds, issued by the said Blue Ridge Railroad Company, and guaranteed by the State, the State treasurer is hereby authorized and required to deliver to the president of the Blue Ridge Railroad Company, in South Carolina, treasury certificates of indebtedness (style revenue bond scrip), to the amount of one million eight hundred thousand dollars, the said certificates to be executed in the manner
47 hereinafter directed; and if the said company shall not be able to deliver all of said bonds at one time, the treasurer is authorized and required to deliver to the said president such amount of such treasury certificates as shall be proportioned to the amount of bonds delivered.

SEC. 3. That to carry out the purposes of this act, the State treasurer is hereby authorized and required to have printed, or engraved on steel, as soon as practicable, treasury certificates of indebtedness, to be known and designated as revenue bond scrip of the State of South Carolina, in such form and of such denomination as may be determined on by the State treasurer and the president of the Blue Ridge Railroad Company, in South Carolina, to the amount of one million eight hundred thousand dollars; which revenue bond scrip shall be signed by the State treasurer, and shall express that the sum mentioned therein is due by the State of South Carolina to the

bearer thereof, and that the same will be received in payment of taxes and all other dues to the State, except special tax levied to pay interest on the public debt.

SEC. 4. That the faith and funds of the State are hereby pledged for the ultimate redemption of said revenue bond scrip, and the county treasurers are hereby required to receive the same in payment of all taxes levied by the State, except in special payment of special taxes levied to pay interest on the public debt; and the State treasurer and all other public officers are hereby required to receive the same in payment of all dues to the State; and, still further to provide for the redemption of said revenue bond scrip, an annual tax of three mills on the dollar, in addition to all other taxes, on the as-
48 sessed value of all taxable property in the State, is hereby levied, to be collected in the same manner, and at the same time, as may be provided by law for the levy and collection of the regular annual taxes of the State; and the State treasurer is hereby required to retire, at the end of each year from their date, one-fourth of the amount of the treasury scrip hereby authorized to be issued until all of it shall be retired, and *and* to apply to such purpose exclusively the taxes hereby required to be levied.

SEC. 5. That if any such revenue bond scrip is received in the treasury for the payment of taxes, the treasurer be, and he is hereby authorized to pay out such revenue bond scrip in satisfaction of any claims against the treasury, except for interest that may be due on the public debt.

SEC. 6. That upon the delivery to the State treasurer of the said guaranteed bonds of the Blue Ridge Railroad Company, or of any part of them, the treasurer is hereby required to cause the same to be cancelled and destroyed, in the presence of the president of the Blue Ridge Railroad Company, in South Carolina, and in the presence of a joint committee of the senate and house of representatives of this State, to be for that purpose appointed.

SEC. 7. That whenever the whole number of the said guaranteed bonds shall have been delivered to the treasurer as cancelled, as required by the provisions of this act, the lien of the State of South Carolina upon the estate, property and funds of the said Blue Ridge Railroad Company, in this State, and of the other associated companies in the States of Georgia, North Carolina and Tennessee, as secured by the provisions of an act entitled 'An act to authorize additional aid to the Blue Ridge Railroad Company, in South
49 Carolina,' passed on the fifteenth day of September, anno Domini one thousand eight hundred and sixty-eight, and all other claims or liens which are held by the State against said company or companies, on account of said guaranty, shall, from henceforth, be forever discharged and released; and should the said company be unable, from any cause, to deliver all of said bonds, such liens shall be discharged and released to an extent which shall be proportional to the amount of such bonds actually delivered.

SEC. 8. That if the said company shall accept the provisions of this act, it shall be authorized, if the board of directors may desire, to change the corporate name of the company to that of the 'Knox-

ville & South Carolina Railroad Company,' and shall have power to extend its railroad, or to construct branches thereof, to any points *are* places in this State, with all the powers and privileges with which the said company is now vested by the provisions of its charter; and the said company shall have power to issue bonds and to secure the same by a mortgage, to such amount and in such manner as the board of directors may direct. And all sales of stock in the said Blue Ridge Railroad Company, in South Carolina, and its associate companies, formerly held by the State and sold by the commissioners of the sinking fund, be and they are hereby confirmed.

SEC. 9. That if any person shall forge or counterfeit the treasury scrip hereby authorized to be issued, or shall directly or indirectly aid or assist in the forging or counterfeiting of such scrip, or shall issue, or in any manner use any such forged or counterfeited scrip, he shall, on conviction thereof, be fined, in the discretion of the court, and shall be imprisoned in the penitentiary for a term not exceeding ten years."

50 Endorsements on agreement to submit: 5734. Edward B. Wesley *vs.* Howard P. Eells. Agreement to submit. Filed Feb. 5th, 1898. Irvin Belford, clerk U. S. circuit court, N. D. O.

51 *Order of Continuance.*

February Term, A. D. 1898, to wit, April 4th, 1898.

Present: Honorable Augustus J. Ricks, United States district judge.

EDWARD B. WESLEY
vs.
HOWARD P. EELLS. } # 5734. Chancery.

This cause is continued to the next term of this court.

Order of Continuance.

April Term, A. D. 1898, to wit, September 29th, 1898.

Present: Honorable E. S. Hammond, U. S. dist. judge, sitting by designation, and Augustus J. Ricks, U. S. dist. judge.

EDWARD B. WESLEY
vs.
HOWARD P. EELLS. } # 5734. Chancery.

This cause is continued to the next term of this court.

52 *Opinion of the Court.*

In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

EDWARD B. WESLEY
vs.
HOWARD P. EELS.

This is an action to enforce the specific performance of an admitted contract between complainant and defendant for the sale and purchase by them respectively of certain property known as Agricultural Hall, located in the city of Columbia, South Carolina.

On December 24, 1890, the State of South Carolina being the owner of said Agricultural Hall property, the General Assembly of that State passed an act providing for the sale of said property by the commissioners of the sinking fund of the State of South Carolina. Pursuant to that act the property was sold at public auction on February 2, 1892, and was bid in by the complainant, by his attorney, for the sum of $16,165.00.

By the terms of sale the purchaser was required to pay in cash one-third of the purchase price, and to execute his bond and mortgage of the premises to secure the balance of the purchase price, in two equal annual installments, with interest from the date of sale, the obligor to have the option of paying the whole or any part of the indebtedness so to be secured at any time before its maturity.

Complainant caused the deed for the premises to be made to one J. W. Alexander, who consented to act as trustee for him for the purchase of the premises, and the deed was duly executed and delivered by the commissioners of the sinking fund to Alexander in fee-simple without a declaration of the trust. Alexander executed and delivered to the treasurer of the State of South Carolina his bond in the penal sum of $21,553.34, conditioned for the pay-
53 ment of $10,776.67 in two equal annual installments from the date of the bond, with interest payable annually. It was provided in the bond that Alexander should have the privilege of paying the whole or any part of the amount secured by the bond before maturity. The bond and mortgage and deed of conveyance were dated the 2nd of February, 1892, the day of sale.

On the 16th day of February, 1892, complainant Wesley, being the owner and holder of a large amount of revenue bond scrip of the State of South Carolina, furnished to the said Alexander an amount thereof which at its par value was more than sufficient to cover the amount due the State of South Carolina on said bond and mortgage, and Alexander, through his attorneys, exercising the power given him by the terms and conditions of his bond to the State, duly tendered to W. T. C. Bates, State treasurer of South Carolina, the full amount due thereon, including interest. Bates had the custody and possession of the bond and mortgage and was the officer designated by law to receive the amount of the bond and

mortgage, he being the obligee named in the bond. The tender was refused.

By the laws of South Carolina a tender in full of the amount of money due to a mortgagee secured by a mortgage of personal or real property at any time when the mortgagor has a right to pay the same operates as a satisfaction and extinguishment of the lien of the mortgage securing the payment of such money, whether the amount so tendered be accepted or not and whether the mortgagor shall keep himself in position to make good the tender or not.

Salinas *vs.* Ellis, 26 S. C., 337.

After tender was made by Alexander the State treasurer caused the mortgage given by Alexander to be filed for record in the office of the register of mesne conveyances for Richland county, South Carolina. The mortgage still stands of record unsatisfied.

On February 15, 1893, Alexander conveyed said Agri-
54 cultural Hall property to complainant at his request.

In October, 1897, complainant entered into a contract with Howard P. Eels, defendant herein, whereby he agreed to convey said Agricultural Hall property to said Eels, free from any valid lien or encumbrance whatever, at and for the price of twenty thousand dollars in cash. The premises are now and were at the time of making the contract of the value of twenty thousand dollars. Complainant is ready and willing to deliver to defendant a good and sufficient deed in law to convey the said premises to him in fee-simple. Defendant refuses to receive said deed and pay the purchase price, contending that the revenue bond scrip tendered by Alexander in payment of the amount due on the bond and mortgage was not a valid obligation of the State of South Carolina, and consequently did not constitute a legal tender for the debt and did not operate as an extinguishment of the lien of the mortgage. There are no other liens upon said property except some unentered taxes due the State of South Carolina, which amount complainant is willing that defendant retain out of the purchase price of the premises when ascertained.

It is admitted that if the revenue bond scrip tendered by Alexander was valid and receivable for dues to the State of South Carolina the lien of the mortgage was extinguished by its tender; but defendant claims that the revenue bond scrip was in its inception invalid and unconstitutional, constituted no claim against the State of South Carolina, and that its tender was a mere nullity.

By an act of the General Assembly of South Carolina passed September 15, 1868, entitled "An act to authorize additional aid to the Blue Ridge Railroad Company in South Carolina," the State, by a guaranty endorsed thereon, pledged its faith and funds to the payment of the principal and interest of the bonds to be issued by the railroad company to the amount of $4,000,000. The bonds authorized by the act, with the guaranty endorsed, were issued.

55 On March 2, 1872, an act of the General Assembly of South Carolina authorizing the issue of the revenue bond

scrip tendered in payment of the mortgage given by Alexander to the State of South Carolina was passed and is as follows:

An act to relieve the State of South Carolina of all liability for its guaranty of the bonds of the Blue Ridge Railroad Company by providing for the securing and destruction of the same.

Whereas, the State of South Carolina has, by and in pursuance of the provisions of an act approved the fifteenth day of September, A. D. 1868, entitled "An act to authorize additional aid to the Blue Ridge Railroad Company in South Carolina," endorsed a guaranty of the faith and credit of the State on four millions of dollars of bonds, issued by the said Blue Ridge Railroad Company, comprehending the Blue Ridge Railroad Company in South Carolina; the Blue Ridge Railroad Company in Georgia; the Tennessee River Railroad Company in North Carolina; the Knoxville and Charleston Railroad Company in Tennessee, and the Pendleton Railroad Company in South Carolina, for the purpose of aiding the speedy completion of the said railroad, which bonds are liable for the debts of the said railroad companies; and whereas the present condition of the finances of the State and of said companies are such as to make the further continuance of said bonds on the market inexpedient and unadvisable, and a serious injury and prejudice to the credit of the State; and whereas, the existence of the said four millions of dollars of bonds, so guaranteed, creates a large liability upon the part of the State, which the treasurer may be required to meet at unfor-seen and inopportune times; and whereas, the liability of the State on account of such guaranty, should be faithfully met and discharged; therefore, in order to secure the recovery and destruction of the bonds and coupons of the said company, issued under and in pursuance of the provisions of the aforesaid act, now
56 pledged in the city of New York and elsewhere, and to relieve the State of all liabilities, whatsoever by reason of its endorsement and guaranty of said bonds:

SEC. 1. Be it enacted by the senate and house of representatives of the State of South Carolina, now met and sitting in General Assembly, and by authority of the same, that the State treasurer is hereby directed, with the consent, in writing, of the president of the Blue Ridge Railroad Company, in South Carolina, to require the financial agent of the State, in the city of New York, immediately to deliver to the State treasurer all the bonds of the Blue Ridge Railroad Company, indorsed and guaranteed by the State of South Carolina, which are now in his possession, and held by him as collateral security for advances made by the said financial agent, by the order of the financial board of the Blue Ridge Railroad Company; and upon the delivery of said bonds the treasurer is hereby required to cancel the same in the manner hereinafter directed; and the said Blue Ridge Railroad Company shall thereupon be discharged from all liability to the State on account of such advances.

SEC. 2. That upon the surrender by the said company to the State treasurer, of the balance of the said four millions of dollars of bonds, issued by the said Blue Ridge Railroad Company, and guaranteed

by the State, the State treasurer is hereby authorized and required to deliver to the president of the Blue Ridge Railroad Company, in South Carolina, treasury certificates of indebtedness (styled revenue bond scrip), to the amount of one million eight hundred thousand dollars, the said certificates to be executed in the manner hereinafter directed; and if the said company shall not be able to deliver all of said bonds at one time, the treasurer is authorized and required to deliver to the said president such amount of such treasury certificates as shall be proportioned to the amount of bonds delivered.

57 SEC. 3. That to carry out the purposes of this act, the State treasurer is hereby authorized and required to have printed, or engraved on steel, as soon as practicable, treasury certificates of indebtedness, to be known and designated as revenue bond scrip of the State of South Carolina, in such form and of such denomination as may be determined on by the State treasurer and the president of the Blue Ridge Railroad Company, in South Carolina to the amount of one million eight hundred thousand dollars; which revenue bond scrip shall be signed by the State treasurer, and shall express that the sum mentioned therein is due by the State of South Carolina to the bearer thereof, and that the same will be received in payment of taxes and all other dues to the State, except special tax levied to pay interest on the public debt.

SEC. 4. That the faith and funds of the State are hereby pledged for the ultimate redemption of said revenue bond scrip, and the county treasurers are hereby required to receive the same in payment of all taxes levied by the State, except in special payment of special taxes levied to pay interest on the public debt; and the State treasurer and all other public officers are hereby required to receive the same in payment of all dues to the State; and, still further to provide for the redemption of said revenue bond scrip, an annual tax of three mills on the dollar, in addition to all other taxes, on the assessed value of all taxable property in the State, is hereby levied, to be collected in the same manner, and at the same time, as may be provided by law for the levy and collection of the regular annual taxes of the State and the State treasurer is hereby required to retire at the end of each year from their date, one-fourth of the amount of the treasurer's scrip hereby authorized to be issued until all of it shall be retired, and to apply to such purpose exclusively the taxes hereby required to be levied.

SEC. 5. That if any such revenue bond scrip is received in
58 the treasury for the payment of taxes, the treasurer be, and he is hereby authorized to pay out such revenue bond scrip in satisfaction of any claims against the treasury, except for interest that may be due on the public debt.

SEC. 6. That upon the delivery to the State treasurer of the said guaranteed bonds of the Blue Ridge Railroad Company, or of any part of them, the treasurer is hereby required to cause the same to be cancelled and destroyed, in the presence of the president of the Blue Ridge Railroad Company, in South Carolina, and in the presence of a joint committee of the senate and house of representatives of this State, to be for that purpose appointed.

SEC. 7. That whenever the whole number of the said guarantee bonds shall have been delivered to the treasurer as cancelled, as required by the provisions of this act, the lien of the State of South Carolina upon the estate, property and funds of the said Blue Ridge Railroad Company, in this State, and of the other associated companies in the States of Georgia, North Carolina and Tennessee, as secured by the provisions of an act entitled "An act to authorize additional aid to the Blue Ridge Railroad Company, in South Carolina," passed on the fifteenth day of September, anno Domini one thousand eight hundred and sixty-eight, and all other claims or liens which are held by the State against said company or companies, on account of said guaranty, shall, from thenceforth, be forever discharged and released; and should the said company be unable, from any cause to deliver all of said bonds, such liens shall be discharged and released to an extent which shall be proportional to the amount of such bonds actually delivered.

SEC. 8. That if the said company shall accept the provisions of this act, it shall be authorized, if the board of directors may desire, to change the corporate name of the company to that of the "Knoxville & South Carolina Railroad Company," and shall have power to extend its railroad, or to construct branches thereof, to any
59 points or places in this State, with all the powers and privileges with which the said company is now vested by the provisions of its charter; and the said company shall have power to issue bonds and to secure the same by a mortgage, to such amount and in such manner as the board of directors may direct. And all sales of stock in the said Blue Ridge Railroad Company, in South Carolina, and its associate companies, formerly held by the State and sold by the commissioners of the sinking fund, be and they are hereby confirmed.

SEC. 9. That if any person shall forge or counterfeit the treasury scrip hereby authorized to be issued, or shall directly or indirectly aid or assist in the forging or counterfeiting of such scrip, or shall issue, or in any manner use any such forged or counterfeited scrip, he shall, on conviction thereof, be fined, in the discretion of the court, and shall be imprisoned in the penitentiary for a term not exceeding ten years.

The revenue bond scrip issued pursuant to this act was of different denominations, varying from $1 to $5,000, and was in the form following:

$100.00 No. 21. $100.00

Revenue Bond Scrip.

THE STATE OF (Palmetto Tree) SOUTH CAROLINA.

COLUMBIA, S. C., *March* —, 1872.

Receivable as one hundred dollars in payment of all taxes and dues to the State, except special tax levied to pay interest on public debt.

NILES G. PARKER,
State Treasurer.

One hundred dollars. One hundred dollars.

(On each side of scrip:) One hundred dollars, act March, 1872

The exchange contemplated by this act was effected; individuals holding the guaranteed bonds as collateral security for loans of money to the railroad company surrendered them and accepted in lieu thereof revenue bond scrip at the lower rate. Complainant Wesley advanced the sum of three hundred and forty-four
60 thousand nine hundred and twenty-five dollars in cash, and with that sum redeemed two millions nine hundred and two thousand dollars of the said Blue Ridge Railroad bonds, with all their coupons attached, and delivered the same to the treasurer of the State of South Carolina, and the said bonds and attached coupons were mutilated and cancelled in accordance with the provisions of said act. Wesley received from the State treasurer of South Carolina one million five thousand dollars of the said revenue bond scrip.

After the exchange of guaranteed bonds for scrip was made the legislature of South Carolina passed an act on March 13, 1872, abolishing the office of State auditor and vested his powers in the comptroller general. By an act passed October 22, 1873, the fourth section of the act of March 2, 1872, providing for an annual tax of three mills on the dollar for the redemption of the revenue bond scrip, was repealed. The act also forbade the comptroller general to levy any tax whatever, unless expressly thereafter authorized to do so by statute. On December 22, 1873, an act was passed forbidding any State or county officer to accept payment of taxes in revenue bond scrip, and forbids the collection of taxes to redeem said revenue bond scrip. The provision in the act of March 2, 1872, that the scrip should be received in payment of dues to the State has never been repealed.

This South Carolina revenue bond scrip has twice been held to be bills of credit by the supreme court of South Carolina in the cases of State *ex rel.* Shiver *vs.* Comptrolier General, 4 S. C., 185, and Auditor *vs.* Treasurer, 4 S. C., 311.

To this judgment no holder of the revenue bond scrip was a party and are not concluded thereby.

Hagood *vs.* Southern, 117 U. S., 52.

This scrip has also been before the Supreme Court of the United States three times. The decision in the first two cases was adverse to the holders of the scrip, upon the grounds that the actions
61 were suits against the State of South Carolina without their consent, and were dismissed without prejudice to a new action.

Williams *vs.* Hagood, 98 U. S., 72.
Hagood *vs.* Southern, 117 U. S., 52.

The holding in the other one was in favor of the complainant in this case, the decision being that he was entitled to the possession of the property which is the subject of this suit.

Tindal *vs.* Wesley, 167 U. S., 204.

But the question of the violation of the Constitution of the United States or of the State of South Carolina was not passed upon in either of these cases.

Defendant asserts that the revenue bond scrip of South Carolina was issued in violation of the constitution of South Carolina, which provides, art. IX, sec. 7, that public debts may be contracted for the purpose of defraying extraordinary expenditures; sec. 10, that no scrip, certificate, or other evidence of State indebtedness shall be issued except for the redemption of stock, bonds, or other evidence of indebtedness previously issued; and sec. 14, that any debt contracted by the State shall be by loan on State bonds of amounts not less than $50 each, on interest, payable within twenty years after the final passage of the law authorizing such debts. He avers that the guaranty of the State of the original bonds of the Blue Ridge Railroad Company was illegal and void because made in violation of express statutory conditions, which *was* never repealed, and that as a consequence the revenue bond scrip was without consideration, which, appearing on the face of the law itself, deprived the certificates of all validity, in whatever hands they might be found. Defendant also contends that the revenue bond scrip is void as being in violation of the provision of the Constitution of the United States, art. I, section 10, which declares that no State shall emit bills of credit, and that these certificates, on the face of the
62 instrument and the law creating it, appear manifestly designed to circulate as money in the ordinary transactions of business.

Are these certificates bill- of credit within the meaning of the United States Constitution?

In the case of Poindexter *vs.* Greenhow, 114 U. S., at page 283, the Supreme Court say:

The meaning of the term "bills of credit" as used in the Constitution has been settled by decisions of this court. By a sound rule of interpretation it has been construed in the light of the historical circumstances which are known to have led to the adoption of the clause prohibiting their emission by the States and in view of the great public and private mischiefs experienced during and prior to the period of the war of independence in consequence of unrestrained issues by the colonial and State governments of paper

money based alone upon credit. The definition thus deduced was not founded on the abstract meaning of the words, so as to include everything in the nature of an obligation to pay money, reposing on the public faith and subject to future redemption, but was limited to those particular forms of evidences of debt which had been so abused to the detriment of both private and public interests. Accordingly Chief Justice Marshall, in Craig *vs.* Missouri, 4 Pet., 410, 432, said that "bills of credit signify a paper medium *medium* intended to circulate between individuals and between government and individuals for the ordinary purposes of society." This definition was made more exact, by merely expressing, however, its implications, in Briscoe *vs.* The Bank of Kentucky, 11 Pet., 257, 314, where it was said: "The definition, then, which does include all classes of bills of credit emitted by the colonies or States is a paper issued by the sovereign power containing a pledge of its faith and designed to circulate as money." And again, p. 318: "To constitute a bill of credit within the Constitution it must be issued by a State, on the faith of the State, and be designed to circulate as
63 money. It must be a paper which circulates on the credit of the State, and is so received and used in the ordinary business of life." The definition was repeated in Darrington *v.* The Bank of Alabama, 13 How., 12.

A paper, then, which is a bill of credit has three essentials: 1, it must be issued by a State in its sover-ign character; 2, it must contain a pledge of the faith of the State; 3, it must be designed to circulate as money.

There can be no serious dispute that the first two requirements are clearly established by the act itself. Section 3 provides for a paper to be issued by the State treasurer and be signed by him, expressing that the amount named therein is due to the bearer from the State of South Carolina. By section 4 the faith and funds of the State are pledged for its ultimate redemption.

It remains to be determined whether this scrip was intended to circulate as money.

The opinion of the supreme court of South Carolina in the case of State *ex rel.* Siver *vs.* Comptroller General, 4 S. C., 185, and the opinion of Judge Willard, of the supreme court of South Carolina, on circuit, in the cases of Garry *vs.* Parker, treasurer, and Dupre *vs.* County Treasurer, which cases were affirmed by the supreme court of South Carolina in 4 S. C., 311, discuss the question as to whether this scrip was intended to pass as currency or a circulating medium. These opinions make it quite clear that the legislature intended that the scrip should circulate between the State government and the people as money.

The supreme court of South Carolina, in passing upon the validity of this scrip, speaking through Chief Justice Moses, gives its reasons for holding them to be bills of credit, as follows:

"The argument which holds it valid as a subsisting obligation and repels the character of a bill of credit, under which it is
64 classed by the respondent, seems to rest upon the fact that it was not designed to circulate as money. The opinion of

Mr. Justice Willard in State *ex rel.* Garry *vs.* Parker, treasurer, and Dupre *vs.* County Treasurer, which was brought to our notice in the case before us and which will be reported with it, is so full and comprehensive on the point as to leave little space for addition or enlargement. It is not because the paper circulates from hand to hand in a community like money that it is to be held a bill of credit, nor does the fact of currency so constitute it. A State might well make the coupons attached to its bonds receivable for taxes without subjecting them to the disabilities of bills of credit, as used in the Constitution, even although they might readily pass in payment of debts or for the purchase of commodities. The design to create a circulating medium would be wanting. If, however, the intention to create a currency is apparent from the whole scope of the act, the emission is a bill of credit within the terms of the Constitution. To the many indications in the act to show the intended design, which have been pointed out in the opinion of Justice Willard, it might be added that the revenue bond scrip could never have been intended or proposed as a State security for investment, because it bore no interest and its value consisted in the fact of its ready capacity and facility in supplying all articles necessary for use or consumption. Its capacity for circulation and its easy convertibility, together with its adaptation to immediate and ready use, would cause a demand for it which a State bond, although bearing interest, could not command. It is contended that, as this was a provision to meet a debt of the State, the purpose was to furnish a fund for payment and not a circulating medium. But cannot the two coexist? May not the medium of payment be of such a kind and character as to create in itself a circulating medium? It is not the end which the assumption is to accomplish, but the
65 mode and manner designed and the use contemplated. The State might issue certificates of indebtedness for the redemption of its bonded debt; but if it did so in the form and manner and design proposed by the act of March 2nd, 1872, would they be less obnoxious to the objection urged against the revenue bond scrip because they were issued to pay or meet a debt? It is not the purpose of the issue which affects the instrument through which it is made, but the characteristics and incidents which attach to it as a provision and recommendation for a circulating medium."

State *ex rel.* Shiver *vs.* Comptroller General, 4 S. C., at page 228.

So much of the opinion of Justice Willard (to which reference is made in the foregoing opinion of the supreme court of South Carolina and whose reasoning they adopted) as bears upon the question whether this scrip was intended for circulation as money follows:

"There are certain characteristics that tend to adapt a paper expressing a promise to pay money or representing money value to become current in the community as money. It must be in a form convenient to pass from hand to hand. It must be based either on the credit of a government, a corporation, or an individual or an association of individuals, or upon a fund pledged or set apart for

its redemption. It must either have undoubted credit, such as arises from its ready convertibility into money value, or it must tend to supply some want, natural or artificial, of the community in which it is intended for circulation. It must be placed upon the community in quantity or volume sufficient to create an adequate interest and motive to secure its currency; and, finally, it must have a certain denominational character adjusted to the wants of the community in respect to a circulating medium.

"An examination of the act in question will disclose a clear intent to clothe the obligations in question with attributes fitting them for general circulation as money. These attributes will be considered in the order just stated.

66 "1st. Was it intended that the revenue bond scrip should be issued in a form convenient to pass from hand to hand in ordinary transactions of the community?

"Section 3 gives to the scrip the form most usual and convenient to serve as paper money, viz., that of the usual bank or treasury note. It is to be printed or engraved on steel in such form and of such denominations as the State treasurer and the president of the Blue Ridge Railroad Company shall determine. The — of referring this authority as to form and denomination to the treasurer and the president of the railroad company is obvious. The treasurer is, by the act, to receive and pay out this scrip from the treasury as money, and the president of the railroad company is to receive the scrip as the representative of his company and to realize from its employment, and they are most likely to know what qualities as to form and denomination would have the tendency to give the greatest currency to the scrip at the time of its issue. A certain discretion is left with them for such purpose. While the third section determines what shall be the substantial character of the scrip as importing a pledge of the public faith and credit, the form of the instrument, as adapting it in external appearance to the common notion of money, is left with those most concerned with its currency.

"2nd. It is to be based, by the terms of the act, on the credit of the State government in its sovereign capacity.

"3rd. The act attempts to confer upon it only the full credit capable of being conferred by the use of the full faith and credit of the State, but to create an artificial want in the community, tending to give it currency. In the first place, it is made receivable in payment of taxes and all other dues to the State except the special tax levied to pay interest on the public debt (sec. 3). Again, it is provided that if any such scrip is received in the treasury for the payment of taxes the treasurer is authorized to pay out the same

67 in satisfaction of any claim against the treasury except interest that may be due on the public debt (sec. 5).

"These provisions contain two distinct features. The first is a permissive feature, affecting each individual in the community who is a tax-payer and supplying to him a motive to become a purchaser of the scrip. A more energetic means of creating an interest and motive in the community to deal with the scrip as money could not be afforded short of making the scrip compulsory pay-

ment of all debts as between individuals. The other feature involves the communication to the scrip of the capacity of performing all the functions of money in all dealings between State and individuals, excepting only the payment of interest on the public debt. This last feature can have no other significance than that of giving currency to the scrip as money.

"It will be observed from the language of the fourth section, in which the faith and funds of the State are pledged, that such is not in terms that such scrip shall be redeemed by the payment to the bearer on presentation of the amount of money called for by it, but the language is 'that the faith and funds of the State are hereby pledged for the ultimate redemption of said revenue bond scrip.'

"It is only ultimate redemption, not payment on demand, that is covered by this pledge. What is meant by ultimate redemption is made clear by the succeeding clauses of that section. It is provided that a certain tax shall be annually levied for the redemption of the scrip, and it is also provided that the State treasurer shall 'retire at the end of each year from their date one-fourth of the amount of the treasury scrip hereby authorized to be issued until all of it shall be retired, and to apply to such purpose exclusively the taxes hereby required to be levied.' The effect of these provisions is that the holder of the scrip must not look to payment according to the tenor of his scrip, but must seek a market for its circulation under the influence of the pledge of faith and funds for
68 its ultimate redemption. In other words, an attempt is made to give currency to the issue, notwithstanding the absence of any intention or ability to redeem according to the tenor of the promise, by obtaining a credit with the community for the amount of scrip put in circulation on the strength of certain special provisions and a general pledge of the faith and funds of the State for its ultimate redemption.

"4th. The quantity or volume of the contemplated issue is such as tended to create a strong motive and interest in the community to keep the scrip in circulation as money. The amount, $1,800,000, as compared with the extent of the commercial transactions of the community on which that amount was intended to be placed, affords the clearest indication of an intention so to affect the interest of the community as to secure its circulation as money. It was to be placed at once in private hands as valid obligations on the part of the State. The various provisions of the act that looked to a distribution among the people preclude the idea that it was intended that the recipients of this large fund should hold it until redemption, or even that it should be kept together in the hands of a limited number of holders. On the contrary, it was clearly intended for dispersion, and the magnitude of the interest in the hands of the first receivers of the scrip was sufficiently large to warrant the assumption that it would become thus diffused throughout the community.

"5th. As *it* regards its adaption in respect of denomination, we have already seen that authority was conferred on those most concerned with its circulation to adapt the issue in that respect to the

wants of the community. Such a provision shows additional evidence of an intent that the scrip should circulate as money.

"Considering the act in its entire aspect, as well as its integral parts, it is clear that the legislature intended that the scrip should circulate as money, and that for this reason the provisions of
69 the act authorizing the issue of scrip are in conflict with the prohibitions of the Constitution of the United States as to the emission of bills of credit by States."

In the case of Poindexter *vs.* Greenhow, 114 U. S., 270, it was urged that interest coupons attached to bonds of the State of Virginia were bills of credit. These coupons were payable to bearer, and were receivable at and after maturity for all taxes, debts, and demands due the State.

The Supreme Court, after reviewing the definition of bills of credit as established by prior decisions, held these coupons not to be bills of credit.

They say:

"It is very plain to us that the coupons in question are not embraced within these terms. They are not bills of credit in the sense of this constitutional prohibition. They are issued by the State, it is true. They are promises to pay money. Their payment and redemption are based on the credit of the State, but they were not emitted by the State in the sense in which a government emits its treasury notes or a bank its bank notes—a circulating medium or paper currency—as a substitute for money; and there is nothing on the face of the instruments, nor in their form or nature, nor in the terms of the law which authorized their issue, nor in the circumstances of their creation or use, as shown by the record, on which to found an inference that these coupons were designed to circulate, in the common transactions of business, as money, nor that in fact they were so used. The only feature relied on to show such a design or to prove such a use is that they are made receivable in payment of taxes and other dues to the State. From this it is argued that they would obtain such a circulation from hand to hand as money as the demand for them, based upon such a quality, would naturally give; but this falls far short of their fitness for general circulation in the community as a representative and substitute for
70 money, in the common transactions of business, which is necessary to bring them within the constitutional provision against bills of credit. The notes of the Bank of Arkansas, which were the subject of controversy in Woodruff *vs.* Trapnall, 10 How., 190, were by law receivable by the State in payment of all dues to it, and this circumstance was not supposed to make them bills of credit. It is true, however, that in that case it was held they were not so, because they were not issued by the State and in its name, although the entire stock of the bank was owned by the State, which furnished the whole capital and was entitled to all the profits. In this case the coupons were issued by the State of Virginia and in its name and were obligations based on its credit, and which it had agreed, as one mode of redemption, to receive in payment of all dues to itself in the hands of any holder; but they were not issued

as and for money, or with the design to facilitate their circulation as such. It was conferred, as is apparent from all the circumstances of their creation and issue, merely as an assurance, by way of contract with the holder, of the certainty of their due redemption in the ordinary transactions between the State treasury and the taxpayers. They do not become receivable in payment of taxes till they are due, and the design, we are bound to presume, was that they would be paid at maturity. This necessarily excludes the idea that they were intended for circulation at all."

There are certain resemblances and several marked differences between the Virginia coupons which were held not to be bills of credit and the South Carolina bond scrip.

The coupons and the scrip are alike in that they are obligations and indebtedness of the State; they are receivable by the State treasurer in payment of taxes and other dues to the State, and their redemption is based upon the faith and credit of the State.

Their dissimilarity lies in the fact that the coupons are to be paid on a day certain, while the scrip is not payable at any particular time, but are only to be redeemed or retired from year to year. The coupons are receivable in payment of taxes and other dues to the State only at and after maturity, while the scrip may be used for these purposes from the date of its issue. The coupons are paid and retired when received by the State, but the scrip may be reissued from the State treasury as often as received in satisfaction of all claims against the State except for paying interest on the public debt.

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In deciding the Virginia coupons not to be bills of credit, the Supreme Court applied certain tests to determine whether they were intended to constitute a paper currency or circulating medium. Apply these tests to the South Carolina bond scrip:

The scrip are, on their face, bills receivable of the State of South Carolina.

In their form and nature they are like bank and treasury notes.

The terms of the law authorizing their issue show that they were intended for circulation between the government and the people as money by the power given to the State treasurer and the president of the railroad company to fix the amount of the scrip, which power was exercised so as to make the denomination as low as one dollar; by reason of them bearing no interest; by the provision as to the form of the scrip; the great volume of the issue; and the scrip being non-interest-bearing, its circulation was necessary to sustain its value.

They could be used for the payment of taxes and other dues to the State from the date of their issue, and before any part of them were required to be redeemed or retired.

The reasoning of the supreme court of South Carolina and of Justice Willard, quoted in this opinion, is so full and convincing that the court feels constrained to follow their decision. Looking at the South Carolina bond scrip in the light of these decisions and the opinion of the Supreme Court of the United States in the case of Poindexter *vs.* Greenhow, it is quite clear that

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they are bills of credit within the prohibition of the Constitution of the United States.

But the complainant urges that the redemption of the revenue bond scrip did not depend solely upon the good faith of the State, because, as between the State and the railroad company, it was in the power of the State to enforce its payment against the railroad company, and that consequently one of the essential elements going to make up the bill of credit is lacking. The case of Hagood *vs.* Southern, 117 U. S., 64, is cited in support of this contention. The Supreme Court in that case say: "As between the railroad company and the State, the former is primarily liable for any debts represented by the revenue bond scrip (the scrip before the court in this case) or for which it is held by others for security, and is bound to indemnify the State against loss on account of its suretyship."

It will be noted that the court does not hold the railroad company in any way remotely liable for the redemption of the scrip as between the holder and the company. The railroad company is a total stranger to the contract, and in no event has the holder of the scrip any recourse to the railroad company in the event of the failure of the State to redeem the scrip. The good faith of the State is the only pledge for the redemption of the scrip.

While the act authorizing the issue of the scrip provided a fund for its redemption raised by taxation, yet its payment out of that fund rests upon the faith of the State.

Darrington *vs.* Alabama, 13 How., 12.

The opinion of this court is that the South Carolina bond scrip issued under and in pursuance of the act of March 2, 1872, are bills of credit, within the prohibition of the Constitution of the United States, and therefore void.

The tender of the scrip by Alexander to the State treasurer of South Carolina was not a valid tender and did not operate
73 to extinguish the mortgage given by Alexander to the State.

The said Agricultural Hall property is still incumbered by the mortgage and complainant cannot give defendant a clear title to it. Complainant is not entitled to relief asked in the bill of complaint.

The conclusion we have arrived at makes it unnecessary to determine the question of the violation of the constitution of South Carolina in the enactment of the law providing for the issue of the scrip certificates.

The bill of complaint is dismissed at complainant's costs.

(Signed) A. J. RICKS, *Judge.*

Endorsements on opinion of the court: 5734. United States circuit court, N. D. O., E. D. Edward B. Wesley *vs.* Howard P. Eels. Filed Nov. 14, 1898. Irvin Belford, clerk U. S. circuit court, N. D. O.

74 *Bill of Complaint Dismissed at Complainant's Costs.*

October Term, A. D. 1898, to wit, November 14th, 1898.

Present: Honorable Augustus J. Ricks, United States district judge.

EDWARD B. WESLEY
vs.
HOWARD P. EELLS. } #5734. Chancery.

This cause having been heard on the pleadings and arguments of counsel, *and* the court, being fully advised in the premises, is of the opinion and does hereby order that said bill of complaint be, and hereby is, dismissed at the costs of the complainant, for which execution is awarded.

75 *Petition for Appeal and Allowance Thereof.*

In the Circuit Court of the United States for the Northern District of Ohio, in the Eastern Division.

EDWARD WESLEY, Plaintiff, Appellant,
against
HOWARD P. EELLS, Defendant, Respondent.

The above-named plaintiff, Edward B. Wesley, considering himself aggrieved by the final decree entered and filed on November 14th, 1898, in the above-entitled cause on a question of the construction and application of the Constitution of the United States, doth hereby appeal from the said decree to the Supreme Court of the United States, and prays that this his appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

J. M. SHALLENBERGER,
WM. H. LYLES,
Attorneys for the Plaintiff and Appellant,
Edward B. Wesley, Columbia, S. C.

And now, to wit, on December 10th, 1898, it is ordered that the appeal be allowed as prayed for.

A. J. RICKS, *Judge, &c.*

76 Endorsement on petition for appeal, &c.: 5734. In the circuit court of the United States for the northern district of Ohio and in the eastern division. Edward B. Wesley, plaintiff, appellant, *vs.* Howard P. Eells, defendant, respondent. Petition and order for appeal. J. M. Shallenberger, Wm. H. Lyles, att'ys for plaintiff. Filed Dec. 10, 1898. Irvin Belford, clerk.

77 *Assignment of Errors.*

In the Circuit Court of the United States for the Northern District of Ohio, in the Eastern Division.

EDWARD B. WESLEY, Plaintiff,
against
HOWARD P. EELLS, Defendant.

On the 10th day of December, eighteen hundred and ninety-eight, came the said plaintiff, by his solicitors, J. M. Shallenberger and William H. Lyles, and says that the decree in the said cause is erroneous and against the just rights of the said plaintiff for the following reasons, to wit:

1. Because his honor held that the South Carolina bond scrip issued under and in pursuance of the act of March 2nd, 1872, are bills of credit within the prohibition of the Constitution of the United States, and therefore void, when he should have held that said bond scrip did not constitute bills of credit within the prohibition of the Constitution of the United States.

2. Because his honor held that the tender of the scrip by Alexander to the State treasurer of South Carolina was not a valid tender and did not operate to extinguish the mortgage given by Alexander to the State—the said Agricultural Hall property is still encumbered by the mortgage, and complainant cannot give defendant a clear title to it—when he should have held that the tender of the scrip by Alexander to the State treasurer of South Carolina was a valid tender and extinguished the lien of the mortgage referred to.

3. Because his honor held that "complainant is not entitled
78 to relief asked in the bill of complaint."

Wherefore the said plaintiff prays that said decree be reversed and said court may be directed to enter a decree in accordance with the bill.

J. M. SHALLENBERGER,
WM. H. LYLES,
Solicitors for the Plaintiff.

79 Endorsement on assignment of errors: 5734. In the circuit court of the United States for the northern district of Ohio, in the eastern division. Edward B. Wesley, plaintiff, against Howard P. Eells, defendant. Assignment of errors. J. M. Shallenberger, Wm. H. Lyles, att'ys for pl'ff. Service accepted 12, 7, '98. Howard P. Eells, by A. St. J. Newberry, his solicitor. Filed Dec. 10, 1898. Irvin Belford, clerk.

80 *Undertaking on Appeal.*

In the Circuit Court of the United States for the Northern District of Ohio, in the Eastern Division.

EDWARD B. WESLEY, Plaintiff, Appellant,
vs.
HOWARD P. EELLS, Defendant, Respondant.

Know all men by these presents we, Edward B. Wesley, of the county of Westchester, in the State of New York, and Joseph Colwell, of the county of Cuyahoga, in the State of Ohio, are held and firmly bound unto the above-named Howard P. Eells in the sum of two hundred and fifty dollars ($250.00), to be paid to the said Howard P. Eells; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 6th day of December, in the year of our Lord one thousand eight hundred and ninety-eight.

Whereas the above-named Edward B. Wesley has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled cause by the judge of the circuit court of the United States *court* for the northern district of Ohio and the eastern division:

Now, therefore, the condition of this obligation is such that if the above-named Edward B. Wesley shall prosecute said appeal to effect and answer all costs if he fail to make said appeal good, then this obligation shall be void; otherwise shall be and remain in full force and virtue.

81 EDWARD B. WESLEY.

Sealed and delivered and taken and acknowledged this 6th day of December, 1898, as to Edward B. Wesley.
JOHN A. SHIELDS,
[SEAL.] *U. S. Commissioner,*
St. of N. Y.

JOSEPH COLWELL.

Sealed and delivered and taken and acknowledged, as to Joseph Colwell, this 9th day of December, 1898.
HARRISON J. UHL,
U. S. Commissioner for
Northern District of Ohio,
Eastern Division.

Approved:
A. J. RICKS, *Judge, &c.*

Endorsements on undertaking on appeal: 5734. In the circuit court of the United States for the northern district of Ohio, in the eastern division. Edward B. Wesley, plaintiff, appellant, *vs.* Howard P. Eells, defendant, respondent. Undertaking on appeal. J. M. Shallenberger, Wm. H. Lyles, att'ys for plaintiff. Filed Dec. 10, 1898. Irvin Belford, clerk.

82 THE UNITED STATES OF AMERICA, *ss:*

Howard P. Eells, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington on the 7 day of January, eighteen hundred and ninety-eight, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the northern district of Ohio and eastern division, wherein Edward B. Wesley is appellant and Howard P. Eells is respondent, to show cause, if any there be, why the judgment in the said appeal mentioned should not be corrected and speedy justice should not be done to the parties on that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 10th day of December, in the year of our Lord one thousand eight hundred and ninety-eight, and the one hundred and twenty-third year of the Independence and sovereignty of the United States of America.

AUGUSTUS J. RICKS,
District Judge.

Service of the above citation is hereby acknowledged and the appearance of the appellee hereby entered.
Dec. 9th, 1898.

HOWARD P. EELLS,
By A. ST. J. NEWBERRY,
His Att'y.

83 In the Circuit Court of the United States for the Northern District of Ohio, Eastern Division.

EDWARD B. WESLEY
vs.
HOWARD P. EELLS. } Chancery. No. 5734.

NORTHERN DISTRICT OF OHIO, *ss:*

I, Irvin Belford, clerk of the circuit court of the United States for said district, do hereby certify that the annexed and foregoing pages contain a full and true copy of the final record, including the petition for allowance of appeal, assignment of errors, and all proceedings in said cause, and there is embraced in said record a true copy of the opinion of the court and agreement to submit and memoranda of documentary evidence filed in such cause, and there is also trans-

mitted with such record the original citation allowed in this cause and in obedience to which this record is certified to the Supreme Court of the United States.

Seal of the Circuit Court, Northern Dist. of Ohio.

In testimony whereof I have hereunto signed my name and affixed the seal of the said court, at Cleveland, in said district, on this 17th day of December, A. D. 1898, and of the 123rd year of the Independence of the United States of America.

IRVIN BELFORD, *Clerk*,
By JNO. VAN NOSTRAN, *Deputy*.

Endorsed on cover: Case No. 17,237. N. Ohio C. C. U. S. Term No., 176. Edward B. Wesley, appellant, *vs.* Howard P. Eells. Filed December 27, 1898.